

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 4 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHESHBHAI G PANDYA

Versus

STATE OF GUJARAT

Appearance:

MR CC BHALJA for Petitioner

Mr MA Bukhari, APP for Respondent No. 1

MR AM PAREKH for Respondent No. 2, 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 18/02/97

ORAL JUDGEMENT

Rule. Mr AM Parekh, learned Advocate waives service of Rule on behalf of respondents No.2 and 3.

The learned Metropolitan Magistrate, Court No.5, Ahmedabad, by order dated 29.11.1996 has dismissed the complaint and discharged the accused for offence under

section 138 of the Negotiable Instruments Act, relying on a decision of the Apex Court in the case of COMMON CAUSE VS UNION OF INDIA, reported in 1996(4) SCC 33.

2. It is contended by the learned Advocate that the said decision has been reviewed by the Apex Court which is reported in 1996 (3) SCC 775 wherein it is held that the said case does not apply to certain categories of cases including offences under section 138 of the Negotiable Instruments Act. This position has been very fairly conceded by Mr Parekh, learned Advocate appearing for the non-applicant.

3. In view of the aforesaid, this criminal Revision Application is allowed and the order of the learned Metropolitan Magistrate, Court No.5 dated 29.11.1996 is quashed and set aside. The trial court is directed to proceed with the case in accordance with law. Rule made absolute accordingly.

At this stage, it is submitted by Mr A M Parekh, learned Advocate for the complainant that the trial court had issued non-bailable warrant against the accused respondents and on restoration of the complaint, the said warrant will also be revived. In view of this, he submits that a direction may be given for recalling the direction of issuing non-bailable warrant. Considering the facts of the case, it is directed that the direction of issuing non-bailable warrant of arrest may be recalled. The petitioner shall appear before the trial court on 3.3.1997.

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